

App. F. IX-4

Previous References

1940

193 .

()

Comb

File No.

192-40

Serial Nos.

1-2

Later References.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Two mg

Part B for March 1941

SUBJECT.

Amendments to the form of Register No I (Criminal)
submitted in Criminal Rules of Practice Vol II.

WD 05

B. N. Shew
5-5-41

Serial
No.

/

From
The Registrar High Court
No. Proc 1221/38-39 of 21.2.41

Requests sanction to make certain amendments
to the form of Register No I (criminal) and
the notes thereunder and also to Quarterly Statements
No 2 (criminal) printed in Criminal Rules of
practice Vol II.

Two statements embodying the existing and
proposed rules are submitted herewith for reference

A draft of a G.O. sanctioning is also
put up for approval or other orders.

CMB
12/3

May be approved
Law Secretary

3
13/3/41

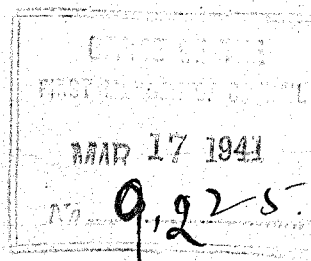
I. Member)

Hm
16/3/41
3
17/3/41

RM
21/3/41

Hm
24/3/41

Im
24/3/41



NOTE—Contn. Sheet.

B

2

To the Regr. High Court
No P 4875 of 27.3.41
Sanctioning the amendments

Bangalore, 21st. February.....1941.

T. Shamiengar, Esq., B.A., B.L.,
~~Am Sundararaja Rao, Esq., B.A., B.L.,~~

~~S. Venkata Ranga Iyengar, Esq., B.A., LL.M.,~~

Registrar, High Court of Mysore.

FROM
To

H.V. Narayana Rao, Esq., B.A., LL.B.,
Secretary to the Government of Mysore,
Law Department, BANGALORE.

SIR,

I am directed to state that unfortunately there has not been uniformity of practice in the Criminal Courts in the State in regard to entries in Register No.I (Criminal). And unfortunately there has been ambiguity in some of the instructions issued regarding the maintenance of the Register.

2. Among the important objects of keeping such registers in regard to the work of Criminal Courts is to show the essential points and dates in the history and disposal of cases and to disclose delay. The Chief Justice noticed in the course of his inspections that dilatoriness and neglect could be masked under the guise of following the instructions in Notes (a) and (c) to Register No.1 regarding the meaning of the words "date of institution" in column 10 of that Register, which are printed on pages 18 and 19 of the Criminal Rules of Practice and Circular Orders, Vol.II.(1935). For instance, if a Magistrate does not want to disclose how many cases he has pending, he can in charge-sheet cases, in which the Police do not produce the Accused, and in complaint cases refrain from issuing process for the appearance of the Accused for days or weeks and for all that time misrepresent the cases as never having been instituted. In the opinion of the Judges of the High Court Notes (a) and (c) to Register I are very unfortunate and should be deleted. The files in the High Court do not disclose why those notes were introduced; but the Judges are sure that it was not for the purpose of allowing opportunities for misrepresenting facts. To manipulate statistics so as to represent cases as not having

been instituted which have actually been instituted and await the Magistrate's decision would be immoral. Unfortunately the notes have that effect, though of course not so intended. In the opinion of the Judges the proper course in such a matter is to carry out the intention of the Code of Criminal Procedure.

2. Section 190, Code of Criminal Procedure speaks of a Magistrate taking cognizance of an offence. To represent a case as not yet instituted, although the Magistrate has taken cognizance of it, is to trifle with facts. If a Magistrate receives a Police charge-sheet in regard to an offence within his jurisdiction, he must take cognizance of the case. No other course is open to him. From the moment he takes cognizance the case has been instituted in his Court, and it is his duty to dispose of it. To give a technical meaning to "instituted" and to treat the case as not instituted for so long as the Magistrate chooses to put off issuing process in order to shirk his duty or to minimise his arrears or for any other purpose is to misuse language and open the door to obvious abuses. If a case is instituted by complaint, the obvious intention of the Code (subject to one exception which will be mentioned hereafter) is that the Magistrate should decide at once either to take cognizance or to dismiss the complaint. There is nothing in the Code to suggest that it is open to the Magistrate to say "I shall think about this and decide in a week or a month or a year whether I shall take cognizance, and meanwhile I shall represent that there is no such case in my Court" That not only would be unprincipled but clearly against the intention of the Code. If the Magistrate does not dismiss the complaint under Section 203, Code of Criminal Procedure, the intention of the Code is that he should take cognizance at once and, unless he dispenses with personal attendance under Section 205, Code of Criminal Procedure, at once issue process for compelling

compelling the attendance of the Accused subject to the exception mentioned. And the exception makes the rule clear. The exception, which is to be found in Section 202 Code of Criminal Procedure, is that he may postpone the issue of process, if he thinks fit, for reasons to be recorded and first make or order an inquiry. The clear meaning is that, if he does not think fit to make or order an inquiry under that provision, he must not postpone the issue of process to compel the appearance of the Accused but must issue it at once. To say that he can issue such process in a case which has not yet been instituted would be perilously near nonsense. If the Code is to be followed, a case must be treated as instituted as soon as a Magistrate takes cognizance of it, and that he must do on receipt of a Police charge-sheet of an offence within his jurisdiction or immediately he has taken the sworn statement of a complainant regarding an offence within his jurisdiction, unless he dismisses the complaint under Section 203, Code of Criminal Procedure, or proceeds under Section 202, Code of Criminal Procedure. If he proceeds under Section 202, Code of Criminal Procedure, then after considering the result of the inquiry he must make up his mind whether he will take cognizance or not; and, if he decides to take cognizance and proceed with the case, at least from that moment the case must be instituted.

3. The Judges are of opinion that the best course will be to strike out Notes (a), (b), (c) and (d) to Register I and in their place add the instructions set out in the enclosed draft amendment. The Register will then correspond with facts and with the intention of the Code, and no Magistrate will be able to hide a case by the simple method of putting off the issue of process.

4. There is a good deal to be said for not counting the duration of a case against a Magistrate until the Accused has appeared. For that purpose it is proposed to make a

a slight alteration in the heading of column 11 of the Register in order that the information in that column may show the date on which the Accused appeared or, if there are more than one, the first date on which one of them appeared. It is also proposed to strike out Note (2) to Quarterly statement 2 (Criminal) and to calculate the duration of every case from the date of institution. That will show how long complainants were kept waiting for a decision and will prevent Magistrates concealing dilatoriness in issuing process after taking cognizance. If a case were seriously delayed because an Accused could not be found, that could always be explained, and no Magistrate would be blamed for that. It is believed that in the Madras Presidency duration is counted from the real date of institution, which is the straight-forward course. At present many of the 6 months-old cases in the Criminal Courts in the State are really older, and there ^{are} many 6 months-old cases of which the High Court never hears.

4. Though a column for "Remarks" is referred to in Note (e), there is no such column in Register No. I. The Judges therefore propose to add a new column number 23 headed "Remarks".

5. I am to request that the Government may be pleased to sanction the enclosed draft amendments to Register I (Criminal) and Quarterly Statement 2 (Criminal), which the Judges propose to make under Section 554 of the Code of Criminal Procedure.

I have the honour to be,

Sir,

Your most obedient servant.



For REGISTRAR (on casual leave)
u



Under Section 554 of the Code of Criminal Procedure (and with the previous sanction of the Government) the High Court hereby makes the following amendments to the form of Register No.I(Criminal) and the Notes thereunder, printed on pages 18 and 19 of Criminal Rules of Practice and Circular Orders, Volume II, (1935):--

I. In the form of Register No.I (Criminal)

- (1) add the words "when and" before the word "how" in the heading of column 11 and
- (2) add a new column numbered 23 and headed "Remarks".

II. Delete notes (a), (b), (c) and (d) appended to the form and insert in their place the following:-

["(a) The date of institution will be

(1) for a case instituted by Police charge-sheet the date on which the charge-sheet is received by the Magistrate,

(2) for a case instituted by complaint under Section 476, Code of Criminal Procedure, or report under Section 482, Code of Criminal Procedure, the date on which the complaint or report is received by the Magistrate,

(3) for a case instituted otherwise by complaint the date on which the Magistrate records the sworn statement of the complainant under Section 200, Code of Criminal Procedure unless he dismisses the complaint under Section 203, Code of Criminal Procedure, or makes or orders an inquiry under Section 202, Code of Criminal Procedure. k

(4) if the Magistrate makes or orders an inquiry into a complaint under Section 202, Code of Criminal Procedure, the date on which he decides to proceed with the case after considering the result of the inquiry". 7

III. Before the present note (e) delete "(e)" and substitute for it "(b)".

HIGH COURT OF MYSORE AT BANGALORE.

Under Section 554 of Code of Criminal Procedure (and with the previous sanction of the Government) the High Court hereby makes the following amendments to the Notes appended to the form of Quarterly Statement No.2 (Criminal) printed on page 33 of the Criminal Rules of Practice and Circular Orders, Volume II, (1935):--

Delete Note 2 appended to the form of Quarterly Statement and renumber the existing Notes 3 and 4 as 2 and 3.

D. Chagge
For REGISTRAR.

Diary. No. of letter replied to.....

General and Revenue Secretariat

()
the 193 . }

Date of issue.....27.3.41.....193

Signed by Mr. K.P.P.....

May this be—

- (i) printed ?
- (ii) treated as a standing order ?
- (iii) published in the Gazette, English Part ?
- (iv) translated ?
- (v) placed at the disposal of the press ?
- (vi) published in the Gazette, Kannada Part ?

Section

File No.

Serial No.

Proceedings of the Government of
His Highness the Maharaja of Mysore.

Read—

Letter No Roc 1221/38-39
of 21.2.1941 from the
Registrar High Court of
Mysore requesting in the
circumstances explained
sanction to make the

~~Order thereon.~~ No. Certain amendments
to the form of Register
No I (criminal) and the
notes thereunder printed on
pages 18 & 19 of criminal
Rules of Practice Vol II
1935) and also to Quarterly
Statement No 2 (criminal)

Order P4875

Dy 27.3.41

Sanctioned

The approved statements
are appended to this Order

Hm
16/3
Secretary to Govt
Law Dept

To

The Registrar High Court

List of Enclosure

Copied by

Examined by

Read :—

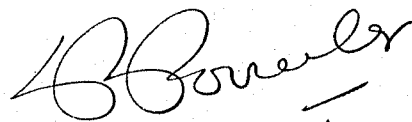
Letter No.R.O.C.1221/38-39 dated 21st February 1941
from the Registrar, High Court of Mysore, requesting in the
circumstances explained sanction to make certain amendments
to the form of Register No.I (Criminal) and the Notes there-
under printed on pages 18 and 19 of Criminal Rules of Practice
Volume II (1935) and also to quarterly statement No.2 (Criminal)

ORDER NO. *P487SCS/92-40-2*
Succ

BANGALORE, DATED *27th* MARCH, 1941.

S a n c t i o n e d.

The approved statements are appended to this order.


Secretary to Government
Law Department
cm

To

The Registrar, High Court of Mysore.

I. In the form of Register No.1 (Criminal).

1) add the words "when and" before the word "how" in the heading of column 11 and (2) add a new column numbered 23 and headed "Remarks".

II. Delete notes (a), (b), (c) and (d) appended to the form and insert in their place the following:-

"(a) The date of institution will be

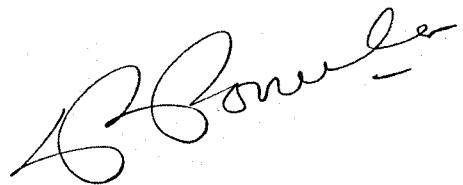
1) for a case instituted by Police charge-sheet the date on which the charge-sheet is received by the Magistrate,

2) for a case instituted by complaint under Section 476, Code of Criminal Procedure, or report under Section 482, Code of Criminal Procedure, the date on which the complaint or report is received by the Magistrate,

3) for a case instituted otherwise by complaint the date on which the Magistrate records the sworn statement of the complainant under Section 200, Code of Criminal Procedure, unless he dismisses the complaint under Section 203, Code of Criminal Procedure, or makes or orders an inquiry under Section 202, Code of Criminal Procedure,

4) if the Magistrate makes or orders an inquiry into a complaint under Section 202, Code of Criminal Procedure, the date on which he decides to proceed with the case after considering the result of the inquiry".

III. Before the present note (e) delete "(e)" and substitute for it "(b)".



In Secretary to Govt
Law Dept

Amendments to the Notes appended
form of Quarterly Statement No 2 (criminal)
Printed on page 33 of the Criminal Rules &
~~High Court of Mysore at Bangalore.~~
Practice and circular orders Vol II (1935)-

Delete Note 2 appended to the form of Quarterly Statement
and renumber the existing Notes 3 and 4 as 2 and 3.

B. Brown
For Secretary to Govt
Law Dept